

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**





ORIGINAL

76-2172

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X  
UNITED STATES OF AMERICA, ex rel. :  
EFRAIN SANTIAGO, :

Petitioner-Appellee, :

-against- :

LEON VINCENT, Superintendent of :  
Green Haven Correctional Facility, :

Respondent-Appellant. :

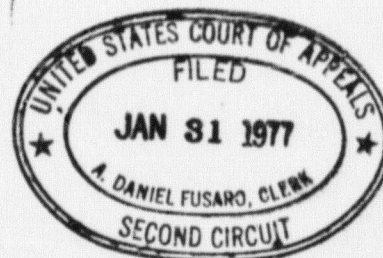
Docket No. 76-2172

-----X  
BRIEF FOR PETITIONER-APPELLEE

ON APPEAL FROM AN ORDER OF THE UNITED STATES  
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
NEW YORK GRANTING A PETITION FOR A WRIT OF  
HABEAS CORPUS

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BRIEF FOR PETITIONER-APPELLEE

PRELIMINARY STATEMENT

This is an appeal from an order of the United States District Court for the Southern District of New York (Hon. Lee P. Gagliardi), dated November 30, 1976, which granted petitioner's application for a writ of habeas corpus and ordered that he be discharged from custody unless the State of New York vacates the judgment of conviction and accords him a new trial within 60 days of the issuance of the mandate therein. On December 16, 1976, the District Court granted appellant's application for a stay of the order on the condition that appellant file an expedited appeal.

QUESTION PRESENTED

Whether the District Court was correct in granting a writ of habeas corpus on the ground that petitioner had been denied his right of confrontation by the state court's refusal to allow defense counsel to attempt to show through cross-examination of a key prosecution witness that the arrest of her brother for the murder in question provided her with a motive to falsify her testimony.



### STATEMENT OF FACTS

Appellant was charged in an indictment (Ind. No. 200/72) with two counts of murder (felony murder and common law murder) and possession of a weapon as a misdemeanor for having allegedly stabbed to death one Manuel Perez, Jr. Following unsuccessful pre-trial hearings, appellant was tried before a jury, with the Honorable William Kapelman presiding. The People's case rested upon the testimony of three witnesses: Isabel Alvarez and two sisters, Myrna and Mildred Crespo.

#### A. The Prosecution

##### 1. The Events

On December 17, 1971 at about midnight, Isabel Alvarez heard a noise in the hallway outside of her third floor apartment at 827 Melrose Avenue (T. 485-88, 503).<sup>\*</sup> Through her peephole, Alvarez saw a man, allegedly petitioner, holding Manuel Perez by the collar (T. 486-93). The perpetrator, speaking Spanish, told Perez to hand over what he had or he would stab him; when the latter replied that he only had three dollars, the perpetrator stabbed him (T. 486). After throwing the wounded man against the steps, the perpetrator went through his pockets (T. 509). Alvarez ran from the peephole and screamed out of her window, attracting the attention of the Crespo sisters upstairs (T. 509-10).

<sup>\*</sup>"T" refers to minutes of pre-trial hearings and trial, dated February 13 to March 5, 1973. Pages 1-61 refer to the Huntley hearing; pages 62-359 refer to the Wade hearing and pages 360-929a refer to the trial. "S" refers to the minutes of sentencing, dated April 5, 1973.



Myrna Crespo stepped outside her fourth floor apartment onto the staircase to observe two men on the landing below, one pointing a knife toward the other (T. 622, 633). She did not see the perpetrator stab the second man but saw him throw the victim onto the steps and go through his pockets (T. 629, 622). Myrna returned to the apartment as her sister, Mildred, was exiting (T. 630, 652). Myrna told Mildred to go back inside the apartment but the latter wanted to see what was happening (T. 623, 707).

When Mildred looked toward the landing below, she saw the victim lying on the stairway while the perpetrator leaned over him with a knife (T. 706). She claimed to have heard substantially the same conversation heard earlier by Myrna and earlier than that by Alvarez (Mildred: T. 729; Myrna: T. 623; Alvarez: T. 486). After the perpetrator finished going through Perez' pockets, he left the building (Alvarez: T. 514). Mildred returned to her apartment, leaving the victim lying on the steps (T. 711, 714). Neither of the Crespo sisters tried to contact the police (T. 677).

Within a half hour of the crime, Alvarez came up to the Crespo apartment to have coffee and chat about the murder (T. 653-54). About one a.m. Detective Hughes, accompanied by two other plainclothes officers, arrived at the apartment in search of witnesses (T. 763, 759). Alvarez gave the detectives a description of the perpetrator (T. 765). The Crespo sisters were present, but did not mention to the police that they too had been witnesses to the incident



(Myrna: T. 655-56; Mildred: T. 726-28).<sup>\*</sup> When Hughes returned at 11:00 a.m. the morning of December 17th, Alvarez gave a description of the perpetrator similar to the one she had given earlier (T. 595, 771), but now claimed to know his identity (T. 768, 179).<sup>\*\*</sup> A few hours later the Crespo sisters also came forward as witnesses and supplied a description of the murderer (T. 769-70, 773, 775, 726-28, 655-56).

The night of December 18th, petitioner was arrested (T. 761). Petitioner admitted being in the area of 160th Street and Melrose Avenue until 11:45 p.m. on December 16th. He then walked home, arriving there at midnight.<sup>\*\*\*</sup>

## 2. The Witnesses

Isabel Alvarez, the only witness who saw the knife penetrate the victim (T. 504-05), was no stranger to stabbings, having once stabbed a man herself (T. 516, 517-18). She committed this assault because the man, whom she had never seen before, had arrived at her apartment with several others and banged on her door (T. 568). Alvarez denied that the dispute had been over a drug transaction,

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<sup>\*</sup>Alvarez thought that the Crespo sisters had given a description of the perpetrator in the early morning hours of December 17th (T. 550), but this was refuted by both sisters (T. 655-56; T. 726-28).

<sup>\*\*</sup>Alvarez claimed to have seen appellant several times in the neighborhood (T. 768, 780). One of the three women who testified told the police that "Frankie" was the name of the murderer; Detective Hughes was not sure which one of the women had supplied the name (T. 775-76).

<sup>\*\*\*</sup>See People's Exhibit No. 2, a stipulated extract of appellant's statement, which was presented to the jury at the close of trial.



though she had been charged on that occasion with possession of heroin as well as assault (T. 575).<sup>\*</sup> She also denied having possessed heroin on July 29, 1972, having flushed a quantity of cocaine down the toilet when the police arrived on November 29, 1972, and having had eight ounces of quinine in her kitchen on the latter date (T. 575-76). When asked about the 246 slips of tinfoil 1 1/2 by 2 inches, which were seized by police officers on November 29, 1972, she replied, "I cut that out to use it as Christmas tree decorations" (T. 576).<sup>\*\*</sup>

Myrna Crespo had never seen the defendant before the murder, during which she observed his full face for three seconds from a distance of ten feet (T. 649, 640, 627). When the police showed the witness photographs of seven men, a few days after the incident, she picked out two as the perpetrator--petitioner and another individual (T. 703).

Mildred Crespo observed the perpetrator's face for seven seconds (T. 722). She had seen him once before and once afterward; on the latter occasion she was with her sister when they saw him from their fourth floor window

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<sup>\*</sup>Mr. Getz, the defense attorney, had represented Alvarez on these matters. Following a hearing held prior to trial, the witness waived her attorney-client privilege, permitting counsel to ask about these criminal acts (T. 70-81).

<sup>\*\*</sup>Brenda Reyes, the murder victim's girlfriend, who had been waiting for him in a cab outside of 827 Melrose Avenue, testified at the Wade hearing that he had gone into the building to buy cocaine from Alvarez and her common law husband Benjamin Perez (T. 338-41). Ms. Reyes did not testify at trial.



(T. 709-10, 722-23).<sup>\*</sup> The sisters' stories conflicted as to what they did after seeing the man outside: Myrna said that neither tried to contact the police (T. 677), while Mildred asserted that they sent their brother for the police (T. 726). Moreover, while both sisters claimed that the perpetrator wore a beret (T. 645, 712), Alvarez was certain that his head was bare (T. 535).

### 3. The Cross-Examination of Mildred Crespo

At the pre-trial suppression hearing, Alvarez testified that after Detective Hughes' one a.m. visit, Pete (or Gustav) Crespo, the brother of Myrna and Mildred Crespo, was arrested for the murder of Manuel Perez (T. 180-81). As revealed in the following colloquy, Alvarez learned of the arrest during her conversation with her common law husband at about 4 a.m. on December 17th (T. 179-80):

Q. And after that, or before that, did Benjamin Perez [Isabel Alvarez's common-law husband] tell you that he had been brought to the 42nd Precinct with reference to questioning on this particular homicide?

THE INTERPRETER: Can you simplify that?

MR. GETZ: All right.

Q. Before he told you the man's name was Frankie, or after he told you the name was Frankie,--

MR. GETZ: Let me finish the question. I haven't finished the question.

<sup>\*</sup>Though Myrna described the night as dark, Mildred maintained that she could see the man's face; Myrna was sure it was the perpetrator though she could not see his face (T. 674-77; 722-23). Moreover, Myrna's pre-trial testimony, rejected by her at trial, placed the time the sisters observed petitioner on the street as having occurred after his arrest, while he was still in custody (T. 671).



THE INTERPRETER: I know. I'm waiting.

Q. Either before or after, did Benjamin Perez tell you that he had been taken to the 42nd Precinct with reference to questioning on this particular homicide?

A. [Isabel Alvarez] I don't know, I know that after he was arrested, they came to look for me. It was after two o'clock in the morning.

Q. After your husband was arrested?

A. After they arrested my husband's friend.

THE COURT: Who is your husband's friend?

THE WITNESS: Pete Crespo, Gustav Crespo [Peewee]. He is brother to the other witness who will appear here.

Q. He is the brother to the other witness. And did Benjamin Perez tell you that he was also taken to the station house with reference to this particular homicide?

A. They were going to take him to the station house but then they took this Crespo.

Q. So far as you know your husband was never taken to the station house?

A. No.

(T. 180-81)

At trial, defense counsel sought to question Mildred Crespo about her knowledge of her brother's arrest:

Q. You have a brother by the name of Peewee?

A. [Mildred Crespo, speaking through an interpreter] Yes.

Q. And did you learn between the time of the night of the incident and the time you spoke with Detective Hughes for the first time that Peewee had been arrested for this homicide?\*

\*In affidavits requested by Judge Gagliardi, defense counsel and his secretary (who had acted as interpreter) stated that they had interviewed the Crespo sisters at their apartment on February 15, 1973. At that time both sisters admitted that

(fn. cont'd.)



MR. GILLEECE [assistant district attorney]: Oh, I object to this question.

MR. GETZ: I asked her if she learned it. If she didn't learn it, she could say no.

THE COURT: Did you ever hear that?

THE WITNESS: That he was arrested? No.

Q. Did you learn he was taken to the station house about this incident?

MR. GILLEECE: Hold on. I object to this now.

THE COURT: Sustained.

MR. GETZ: That's a term of legal art,\* Judge.

THE COURT: Not [sic] it's sustained.

MR. GETZ: If the court pleases, it's a term of legal art.

THE COURT: Now, sir, I don't know where you learned English, but I learned it here in the United States, and it requires me to say certain things and you to understand them. I have said to you five times today if I have said it once, I don't want argument after I have made a ruling.

MR. GETZ: Well, Judge --

THE COURT: Is that clear enough?

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(fn. cont'd.)

they had learned that their brother had been taken into custody for the murder of Perez before they came forward as witnesses. [See Petitioner's Supplemental Memorandum of Law, Exhibits A and B].

\*At the suppression hearing, Assistant District Attorney Gilleece recognized that "arrest" was a term subject to misunderstanding:

[A]rrest is a conclusion. It has a constitutional meaning, it has a statutory meaning and it has a civilian meaning.

The witness whom the prosecution claimed was confused by the word "arrest" was an assistant district attorney (T. 41-42).

MR. GETZ: Yes, sir.

THE COURT: Now, don't reply to it.  
Put your next question.

MR. GETZ: Judge, if the other witness--

THE COURT: Just put your next question.

MR. GETZ: Obviously, if the other witness had a problem with English, this witness has a problem with English.

THE COURT: Would you be seated now.

THE COURT: Don't you hear what I say to you or are you so anxious to talk?

MR. GETZ: I hear you, sir.

THE COURT: You heard me say to you to put the next question. Do you have another question to put, Counselor?

MR. GETZ: Yes.

BY MR. GETZ:

Q. Did your brother ever tell you that he had been taken to the station house to be questioned with reference to this homicide?

MR. GILLEECE: Objection.

THE COURT: Sustained.

MR. GETZ: No further questions.

(T. 730-32).

During summation, the prosecutor stressed that though defense counsel had been able to impeach Alvarez and Myrna Crespo, there was little he could attack in the testimony of Mildred Crespo (T. 844). The district attorney argued, "You saw Mildred Crespo here. Did she have a reason to lie?" (T. 847). In its charge, the court told the jury that "[a]s a matter of law there are no witnesses who can be said to be



interest[ed] witnesses" (T. 860).<sup>\*</sup> Upon the prosecutor's request, a supplemental charge was given on circumstantial evidence for the jury's use in the event that it rejected the testimony of Alvarez, the only witness who claimed to have seen the stabbing, and believed either of the Crespo sisters (T. 912, 915-22).

B. Verdict, Sentence and Further Proceedings

Following summations and instructions by the court, the jury found petitioner not guilty of felony murder (for having murdered the victim in the course of a robbery) and guilty of common law murder and possession of a weapon as a misdemeanor (T. 926-27). He was sentenced to an indeterminate term of imprisonment with a maximum of life and a minimum of 18 years on the murder charge and a one year term on the weapons count.

The issue of denial of petitioner's right to cross-examine Mildred Crespo about her brother's arrest was fully argued before the Appellate Division and before Associate Judge Fuchsberg of the New York Court of Appeals at the leave hearing. The Appellate Division, First Department, on April 3, 1975, affirmed the conviction of murder and the sentence

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<sup>\*</sup>No objection was taken to this charge. However, throughout the proceedings petitioner expressed dissatisfaction with his attorney and moved to have other counsel substituted (T. 372-81, 396-410; S. 2-4). Petitioner specifically objected to his lawyer's attempts to discuss the possibility of pleading guilty to a lesser offense. The defendant continuously asserted his innocence and insisted on going to trial (T. 357, 578-80; S. 10). Justice Kapelman informed petitioner that it was the lawyer's duty to advise him of the possibility of plea negotiations (T. 401).



thereon, but reversed the conviction for possession of a weapon and vacated the one year sentence on that charge [47 A.D. 2d 867]. Leave to appeal to the Court of Appeals was denied on May 19, 1975.

On July 1, 1975, petitioner filed a petition for a writ of habeas corpus [75 Civ. 3225] in the United States District Court for the Southern District of New York, alleging that the trial court had deprived him of his right of confrontation as guaranteed by the Sixth and Fourteenth Amendments. Judge Gagliardi, after thoroughly reviewing the record in the case, granted the petition on November 30, 1976, ordering that the petitioner be discharged from custody unless the State of New York vacates the judgment of conviction and accords him a new trial within 60 days.

#### ARGUMENT

##### POINT I

THE DISTRICT COURT WAS CORRECT IN GRANTING A WRIT OF HABEAS CORPUS ON THE GROUND THAT PETITIONER HAD BEEN DEPRIVED OF HIS RIGHT OF CONFRONTATION BY THE STATE COURT'S REFUSAL TO ALLOW DEFENSE COUNSEL TO ATTEMPT TO SHOW THROUGH CROSS-EXAMINATION OF A KEY PROSECUTION WITNESS THAT THE ARREST OF HER BROTHER FOR THE MURDER IN QUESTION PROVIDED HER WITH A MOTIVE TO FALSIFY HER TESTIMONY.

Although Isabel Alvarez had testified at the Wade hearing that the brother of the Crespo sisters had been arrested for the murder of Perez, defense counsel was not permitted to question Mildred Crespo concerning her knowledge of the arrest. After a single denial by the witness that she had heard of her brother's arrest before the sisters came forward



as witnesses, counsel was precluded from further inquiry. The trial court's refusal to allow searching cross-examination of a key prosecution witness on the subject of her interest in the case--that of exculpating her brother--deprived petitioner of his right of confrontation guaranteed by the Sixth and Fourteenth Amendments. Davis v. Alaska, 415 U.S. 308 (1974); Pointer v. Texas, 380 U.S. 400 (1965). Therefore, Judge Gagliardi's order granting petitioner's habeas corpus petition should be affirmed.

The Supreme Court has held that a primary interest secured by the right of confrontation is the right of cross-examination. Douglas v. Alabama, 380 U.S. 415, 418 (1965). More specifically, the Court has recognized that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination. Greene v. McElroy, 360 U.S. 474, 496 (1959). "Wide latitude" is generally accorded counsel to question witnesses about their bias or interest in the case. United States v. Masino, 275 F. 2d 129, 132 (2d Cir. 1960). The right to attack a witness' credibility by cross-examination directed toward revealing possible motives to falsify testimony has even been declared paramount to conflicting state policies. Davis v. Alaska, supra (confidentiality of youthful offender adjudications); Chambers v. Mississippi, 410 U.S. 284 (1973) (Mississippi "voucher" rule); Chesney v. Robinson, 403 F. Supp. 306 (D. Conn. 1975), aff'd on opinion below, 538 F. 2d 308 (2d Cir. 1976) (secrecy of grand jury proceedings).



Respondent argues that since Mildred Crespo testified in "unequivocal" terms that she had never heard of her brother's arrest, the state court properly sustained the prosecutor's objections to counsel's "secondary line of inquiry." This argument is incorrect for the attorney did not initiate a new area of inquiry but merely sought to rephrase the question which the witness, who was speaking through an interpreter, apparently failed to understand. As Judge Gagliardi observed:

Throughout the trial the court recognized that all three key witnesses, questioned and testifying through an interpreter, had trouble understanding and answering questions (T. 189, 239, 535, 604). Additionally, even the prosecutor, at an earlier point in the proceeding, recognized that the term "arrest" is a legal term subject to misunderstanding.

(Opinion, p. 9).

The witness whom the prosecutor claimed had been confused by the word "arrest" was an assistant district attorney (T. 41-42). Moreover, after asserting that Mildred gave a "definite" response to the single question about the arrest, respondent argues (brief, at 13) that Alvarez was completely mistaken in her answers to a whole series of questions about Pete Crespo's arrest for the murder. Thus, respondent reveals the weakness of his own argument.

Respondent further errs in his contention that "the record makes abundantly clear that Mildred Crespo's brother was never arrested or even taken to the stationhouse for questioning in regard to the homicide." The pretrial testimony of Isabel Alvarez clearly establishes that Pete Crespo



had been arrested for the murder. Respondent's further claim (brief at 13) that the "alleged arrest" occurred on Saturday evening is also incorrect as the record reveals that it occurred in the early morning hours of the 17th, sometime after the first visit of Detective Hughes (T. 181). The Crespo sisters did not come forward as witnesses until the afternoon of that day (T. 209, 236, 267, 656, 659, 728). As both sisters informed defense counsel (through his interpreter) when he interviewed them, they learned of their brother's arrest for the murder before they informed the investigating officers about their observation of the incident. See Petitioner's Supplemental Memorandum of Law, Exhibits A and B.

When it abruptly cut off this critical questioning, the trial court not only refused an offer of proof,\* but proceeded to denigrate the defense attorney in the presence of the jury for his persistence. As the Supreme Court stated in Davis v. Alaska, supra at 318, "On the basis of the limited cross-examination that was permitted, the jury might well have thought that defense counsel was engaged in a speculative and baseless line of attack on the credibility of an apparently blameless witness ...." In fact, after the curtailment of cross-examination in the instant case, the prosecutor was able

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\*The same judge who presided at the trial had heard the testimony of Isabel Alvarez at the Wade hearing, which had been conducted immediately prior to the trial. Judge Gagliardi was thus correct in finding that this provided sufficient notice of the basis for counsel's questioning about Crespo's arrest [opinion, at 10].



to assert boldly in summation, "You saw Mildred Crespo here. Did she have a reason to lie?" (T. 847). Finally, the court's instruction that as a matter of law there were no interested witnesses effectively removed the issue from the jury's consideration.

The court's restriction of cross-examination of Mildred Crespo was not harmless error beyond a reasonable doubt. As the district attorney argued in summation, Mildred Crespo was the only witness presented by the People whom defense counsel could not successfully impeach. The credibility of Isabel Alvarez was seriously damaged by her prior immoral, vicious and criminal acts. Her testimony reveals her as a drug seller who did not hesitate to stab a man, presumably in a dispute over narcotics. Respondent's claim that the jury had to believe Alvarez "or it could not convict" (brief, at 15) is contradicted by the fact that the district attorney sought and obtained a supplemental instruction on circumstantial evidence in the event that the jury totally rejected Alvarez' testimony.

While Myrna Crespo's character was of a higher order than that of Alvarez, her identification testimony was notably weak. Myrna had never seen petitioner before the incident during which she claimed to have observed his full face from a distance of ten feet for only three seconds. Several days after the murder, when shown photographs of seven men by the police, the witness picked out two. Her identification of petitioner is put into further doubt by her Wade hearing testimony, with which she was impeached at trial,



in which she recalled seeing petitioner on the street after being shown the photographs, when he was under arrest.\*

Though Mildred Crespo was the prosecution's most reliable witness, her testimony was hardly strong enough to withstand proof that she had a motive to falsify her testimony. Mildred saw the perpetrator's face for seven seconds; she claimed to have seen him once before the incident and once afterward; on the latter occasion she and Myrna thought they saw the murderer from their fourth floor window. Though the night was dark, Mildred claimed that she could see the murderer's face. Myrna was certain that the man downstairs was the perpetrator though she confessed that she could not see his face. Mildred then sent her brother to the stationhouse to have the man arrested.\*\* Such a desire to apprehend the murderer is anomalous from one of the three women who not only failed to report the murder to the police after its occurrence but, following the departure of the killer, did not even try to ascertain whether the man lying on the steps was alive or dead.

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\*At trial, she asserted that she saw the photographs after observing him on the street. Moreover, while the Crespo sisters noted that the perpetrator wore a beret, Alvarez asserted that his head was bare (T. 535, 645, 712).

\*\*Myrna directly contradicted this claim; she said neither of them contacted the police. If indeed they were responsible for petitioner's arrest, this may have been part of a plan to inculcate him, for, as petitioner readily admitted, he had been in the neighborhood shortly before the murder. This theory explains the fact that Alvarez did not claim to know the murderer's identity until the second visit of the police.



In sum, the trial court refused to permit cross-examination of Mildred Crespo on the subject of her brother's arrest for the murder of Perez and additionally instructed the jury that as a matter of law there were no interested witnesses in the case.\* As the Court stated in Davis v. Alaska, supra at 317:

We cannot speculate as to whether the jury, as sole judge of the credibility of a witness, would have accepted this line of reasoning had counsel been permitted to fully present it. But we do conclude that the jurors were entitled to have the benefit of the defense theory before them so that they could make an informed judgment as to the weight to place on [the witness'] testimony which provided "a crucial link in the proof . . . of petitioner's act." Douglas v. Alabama, 380 U.S. [415], at 419 [1965].

By denying the jurors the benefit of the "defense theory,"\*\* the trial court committed "constitutional error of the first magnitude and no amount of showing of want of prejudice would

\*The denial of effective cross-examination of Mildred Crespo not only kept evidence of that witness' interest from the jury, it kept out evidence of her sister's interest as well. Under New York law, a witness' motivation to falsify testimony may be established by cross-examination of the witness or by the introduction of extrinsic evidence. People v. Brown, 26 N.Y. 2d 88, 94 (1970). No foundation is required before other witnesses may be called to swear to facts showing the bias or interest of the first witness. People v. Brooks, 131 N.Y. 321, 325 (1892); Richardson on Evidence, §505 (10th ed. 1973). The questions defense counsel sought to ask of Mildred Crespo would have shown that the arrest of Pete Crespo was known by Myrna, who lived with her sister and did not come forward as a witness until her sister did. Myrna Crespo had the same interest as Mildred in exculpating her brother and the exclusion of Mildred's testimony on this matter further prejudiced petitioner's case.

\*\*Respondent argues that defense counsel had "no real belief in this theory" for he "advised a plea of guilty knowing that the People had an airtight case against the petitioner" (brief, at 16). The Attorney General fails to mention that the matter of a plea is mentioned in the record only because petitioner cited this as the reason he desired a change of counsel. He

(fn. cont'd.)



cure it.' Brookhart v. Janis, 384 U.S. 1, 3 [1966]."  
Smith v. Illinois, 390 U.S. 129, 131 (1968), quoted in Davis  
v. Alaska, supra at 318. Therefore, Judge Gagliardi  
correctly concluded that petitioner is presently in custody  
in violation of the Constitution of the United States and  
his order granting the petition should be affirmed.

CONCLUSION

THE ORDER OF THE DISTRICT COURT GRANTING  
THE PETITION FOR A WRIT OF HABEAS CORPUS  
SHOULD BE AFFIRMED AND PETITIONER ORDERED  
RELEASED FROM CUSTODY UNLESS THE STATE  
CONDUCTS A NEW TRIAL WITHIN 60 DAYS.

Respectfully submitted,

WILLIAM E. HELLERSTEIN  
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Attorneys for Petitioner-  
Appellee

BARRY BASSIS  
Of Counsel  
January, 1977

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(fn. cont'd.)

continuously asserted his innocence and insisted upon going  
to trial. Moreover, as the court informed petitioner (and  
respondent should know) the lawyer would be negligent if he  
did not discuss the possibility of a plea bargain with his  
client.

STATE OF NEW YORK     )  
                              ) ss.:  
COUNTY OF NEW YORK    )

Barry Bassis                     , an attorney duly admitted to  
the practice of law in this State, does hereby affirm  
and show:

                   That on   January 31, 1977                     , the  
within   brief for petitioner-appellee                     was served  
upon Hon. Louis J. Lefkowitz                     • Attorney General  
of New York State   , attorney for respondent at Two World  
Trade Center, New York, N.Y. 10047

the address designated by him for that purpose, by  
depositing true copies of the same in a postpaid, properly  
addressed wrapper, in an official depository under the  
exclusive care and custody of the United States Post  
Office Department within the State of New York.

Dated:   New York, New York  
          January 31, 1977

Barry Bassis



